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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MARK OWEN LAUN,
12 Petitioner,
13 v.
14 ORANGE COUNTY SHERIFF, et al.,
15 Respondents.
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Case No. 8:18-cv-02226-JVS-KES

ORDER LIFTING STAY AND
REQUIRING RESPONSE
TO HABEAS PETITION

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18 **I.**
19 **BACKGROUND**

20 Petitioner filed this habeas action challenging his 2017 convictions for
21 domestic battery and assault with a deadly weapon in Orange County Superior
22 Court case no. 16HF0902. (Dkt. 1 [“Petition”].) He was sentenced to five years in
23 prison, but his sentence was suspended and he was placed on three years of
24 probation. (See Dkt. 13 at 6; Dkt. 19 at 2, 147.)¹ His Petition brings the following
25 claims:
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27 ¹ Petitioner was later granted permission to have his probation supervision
28 transferred to Washington state. (Dkt. 19.)

1 Ground One: New evidence shows that he is innocent because (a) the
2 victim told a third party that she had inflicted the injuries on herself in
3 an attempt to gain permanent residency status under the Violence
4 Against Women Act, and (b) an expert witness could identify the
5 injuries as self-inflicted. (Dkt. 2 [“Memo”] at 5- 8.)

6 Ground Two: The prosecutor committed misconduct by (a) stating
7 facts not in evidence during closing argument, and (b) telling the
8 Irvine Police Department to stop investigating Petitioner’s case.
9 (Memo at 8-11.)

10 Ground Three: Petitioner’s trial counsel was ineffective for (a) failing
11 to introduce evidence of the victim’s motive to lie (i.e., the
12 immigration concerns), (b) failing to investigate whether fingerprint
13 evidence on the recovered weapon would have exonerated Petitioner,
14 and (c) failing to adequately attack the credibility of the victim.
15 (Memo at 12-26.)

16 Ground Four: Petitioner’s due process rights were violated because
17 the “verdict was decided by a means other than a fair expression of
18 opinion on the part of all the jurors” under California Penal Code
19 section 1181, subd. 4, because (a) one juror fell asleep during the trial,
20 (b) the jury initially indicated it could not reach a verdict during
21 deliberations, and (c) the jurors were not polled. (Memo at 27-28.)

22 In May 2019, the Court stayed this action under Rhines v. Weber, 544 U.S.
23 269 (2005) so that Petitioner could finish exhausting his claims in the state courts.
24 (Dkt. 13.) At the time, he was still pursuing a direct appeal of his convictions. In
25 October 2019, the California Court of Appeal issued an opinion affirming his
26 convictions (case no. G055893). Petitioner then sought review in the California
27 Supreme Court (case no. S259197). On January 22, 2020, that court granted his
28 petition for review but deferred further action until a related issue was decided in

1 another case. This Court directed Petitioner to file a status report within 60 days
2 after final disposition of his petition for review. (Dkt. 20.)

3 While that petition for review remained pending, Petitioner sought relief in
4 the Superior Court under California Penal Code section 1203.4.² On April 18,
5 2021, the Superior Court granted Petitioner relief and dismissed “all felony
6 convictions” and “all misdemeanor convictions” against him in the case. (Dkt. 32-
7 1.) Thus, Petitioner appears to have completed his period of probation.

8 On November 16, 2022, the California Supreme Court dismissed Petitioner’s
9 petition for review. See California Appellate Courts Case Information, Supreme
10 Court Case No. S259197. Petitioner timely filed a status report informing the Court
11 of this and asking to proceed with his Petition. (Dkt. 32.)

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16 ² The dismissal order was entered by the Los Angeles County Superior Court
17 case no. YA098900, rather than the Orange County Superior Court case no.
18 16HF0902, because his “case was transferred to Los Angeles County Superior
19 Court while he was on probation” under California Penal Code section 1203.9.
20 (Dkt. 32-2 [Orange County Superior Court order denying Petitioner’s motion under
California Penal Code section 1203.4 on this basis].)

21 “Section 1203.4 provides that a defendant who ‘has fulfilled the conditions of
22 probation for the entire period of probation, *or* has been discharged prior to the
23 termination of the period of probation’ ... is entitled as a matter of right to have the
24 plea or verdict changed to not guilty, to have the proceedings expunged from the
25 record, and to have the accusations dismissed. ... A grant of relief under section
26 1203.4 is intended to reward an individual who successfully completes probation by
27 mitigating some of the consequences of his conviction and, with a few exceptions,
28 to restore him to his former status in society to the extent the Legislature has power
to do so.... However, such relief “does not, properly speaking, ‘expunge’ the
prior conviction. The statute does not purport to render the conviction a legal
nullity.” People v. E.B., 51 Cal. App. 5th 47, 54 (2020) (citations omitted).

1 filed, Respondent shall lodge with the Court all records bearing on Respondent's
2 contention in this regard.

3 3. If Respondent files a Motion to Dismiss, Petitioner shall file his
4 opposition, if any, to the Motion **within twenty (20) days** of the date of service
5 thereof. At the time the opposition is filed, Petitioner shall lodge with the Court
6 any records not lodged by Respondent which Petitioner believes may be relevant to
7 the Court's determination of the Motion.

8 4. Unless the Court orders otherwise, Respondent shall not file a Reply to
9 Petitioner's opposition to a Motion to Dismiss. If the Motion is denied, the Court
10 will afford Respondent adequate time to answer Petitioner's claims on the merits.

11 5. If Respondent does not contend that the Petition can be decided
12 without the Court reaching the merits of Petitioner's claims, then Respondent shall
13 file and serve an Answer to the Petition **within forty-five (45) days** of the service
14 date of this Order. At the time the Answer is filed, Respondent shall lodge with the
15 Court all records bearing on the merits of Petitioner's claims, including the briefs
16 specified in Rule 5(d) of the Rules Governing Section 2254 Cases in the United
17 States District Courts. The Answer shall also specifically address the necessity for
18 an evidentiary hearing to resolve any issue.

19 6. Petitioner may file a single Reply responding to matters raised in the
20 Answer **within thirty (30) days** of the date of service thereof. Any Reply filed by
21 Petitioner shall: (a) state whether Petitioner admits or denies each allegation of fact
22 contained in the Answer; (b) be limited to facts or arguments responsive to matters
23 raised in the Answer; and (c) not raise new grounds for relief that were not asserted

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25 but rather should be made in an Answer to the Petition which addresses the
26 allegedly defaulted claims on the merits in the alternative. If Respondent's Motion
27 to Dismiss contends that Petitioner has failed to exhaust any state remedies as to
28 any ground for relief alleged in the Petition, Respondent shall also specify the state
remedies still available to Petitioner.

1 in the Petition. Grounds for relief raised for the first time in the Reply will not be
2 considered, unless the Court grants Petitioner leave to amend the Petition. No
3 Reply shall exceed twenty (20) pages in length absent advance leave of Court for
4 good cause shown.

5 7. Unless otherwise ordered by the Court, this case shall be deemed
6 submitted on the day following the date Petitioner's opposition to a Motion to
7 Dismiss and/or Petitioner's Reply is due.

8 8. To request an extension of time for any of the deadlines set forth in
9 this Order, a party must file a motion demonstrating good cause for the extension.
10 Such a motion should be filed before the deadline has expired. Any such motion
11 should be accompanied by a declaration explaining why an extension of time is
12 necessary and by a proposed order granting the requested extension.

13 9. Every document delivered to the Court must include a certificate of
14 service attesting that a copy of such document was served on opposing counsel (or
15 on the opposing party, if such party is not represented by counsel). Any document
16 delivered to the Court without a certificate of service may be returned to the
17 submitting party without being considered by the Court.

18 10. Petitioner shall immediately notify the Court and counsel for
19 Respondent of any change of Petitioner's address. If Petitioner fails to keep the
20 Court informed of where Petitioner may be contacted, this action may be dismissed
21 for failure to prosecute. See Local Rule 41-6.

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23 DATED: December 1, 2022


KAREN E. SCOTT
United States Magistrate Judge